UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,711	07/19/2001	Eric Sven-Johan Swildens	SPEE0005	2091

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EXAMINER
JEAN, FRANTZ B

ART UNIT	PAPER NUMBER
2151	

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/909,711	ERIC SVEN-JOHANSWILDENS, ET AL.
	Examiner	**Art Unit**	
	Frantz B. Jean	2151	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _19 July 2001_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-42_ is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-42_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All   b)☐ Some * c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
   Paper No(s)/Mail Date _4/21/03, 12/29/03_.

4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

This is a first office action in response to application for patent filed on 07/19/01. Claims

1-42 are presented for examination.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 4/21/03, 12/29/03,

5/23/05, 1/14/05, 08/05/05, and 3/15/04 are in compliance with the provisions of 37

CFR 1.97. Accordingly, the information disclosure statement is being considered by the

examiner.

Claim Objections

Various claims recite "its area or its location". Examiner is unable to determine as

to what "its" is referring to. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-42 are rejected under 35 U.S.C. 102(e) as being anticipated by Gupta

et al. US application number 6,405,252.

The applied reference has a common inventor with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art

under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome

either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in

the reference was derived from the inventor of this application and is thus not the

invention "by another," or by an appropriate showing under 37 CFR 1.131.

As per claims 1 and 22, Gupta teaches a process and a program storage

medium readable by a computer for a determining server performance metrics in a

network (col. 3 lines 52 et seq), comprising the steps of: providing service metric probe

means resident on a server for determining the service availability and metric

measurements of types of services provided by a content delivery machine (col. 8 lines

12-26); providing latency probe means resident on a server for determining the latency

of various servers within said network (col. 8 lines 3-11; col. 9 lines 14-31); wherein said

service metric probe means consults a configuration file containing each DNS name in

its area and the set of services associated with each DNS name (col. 8 lines 6-10; col

11 lines 26-32); wherein said services include, but are not limited to: HTTP, HTTPS,

FTP, streaming media, and/or generic SNMP (col. 8 lines 17-26); and wherein said

latency probe means calculates the latency from its location to a client's location (col. 8

lines 3-11).

As per claims 2 and 23, Gupta teaches each server in said network has a metric test

associated with each service supported by said server (a metric test is in inherent in

Gupta server to test, check and measure performance and more see col. 8 lines 35-48).

As per claims 3 and 24, Gupta teaches a service metric probe means (col. 8 lines 35-48) periodically performs metric tests on the servers within its area, and wherein said service metric probe means records the metric results from said periodic tests.

As per claims 4 and 25, Gupta teaches a latency probe means calculates the round trip time (inherent in Gupta latency probe) for sending a packet to a client to obtain the latency value, and wherein the round trip time tests that said latency probe means performs, includes, but are not limited to: PING, UDP Reverse Name lookup, and/or UDP Packets to high number ports (col. 12 lines 37-63).

As per claims 5 and 26, Gupta teaches a latency probe means sends a UDP Packet probe to high number ports that fails, said latency probe means resends said UDP Packet probe with a low TTL number and increments the TTL until failure occurs, the last successful TTL value will indicate the partial latency data (col.13 lines 40-67).

As per claims 6 and 27, Gupta teaches the step of: providing at least one DNS server (col. 6 lines 6-9).

As per claims 7 and 28, Gupta teaches a service metric probe means sends an update to all of said DNS servers in said network that consists of all tests since the last update

(col. 11 lines 26-59).

As per claims 8 and 29, Gupta teaches a latency probe means updates said DNS servers with the clients' latency data (col. 11 lines 26-59).

As per claims 9 and 30, Gupta teaches a DNS server uses said latency test data updates to determine the closest server to a client (col. 11 lines 26-59).

As per claims 10 and 31, Gupta teaches a DNS server uses said test result updates to determine the best server to return for a given DNS name (col. 11 lines 26-59).

As per claims 11 and 32, Gupta teaches a service metric probe means sends a packet request to a server and receives, in response, a packet containing the various metrics of the server, and wherein said service metric probe means combines the server metrics to arrive at a load metric which is sent to said DNS servers (col. 8 lines 12-59; col. Col. 12 lines 13-36).

As per claims 12 and 33, Gupta teaches a process and a program storage medium readable by a computer for a determining server performance metrics in a network col. 3 lines 52 et seq), comprising the steps of: providing service metric probe means resident on a server for determining the service availability and metric measurements of types of services provided by a content delivery machine (col. 8 lines 12-26); providing

latency probe means resident on a server for determining the latency of various servers

within said network (col. 8 lines 3-11; col. 9 lines 14-31); providing at least one DNS

server (col. 6 lines 6-9); wherein said service metric probe means sends an update to all

of said DNS servers in said network that consists of all service availability and metric

measurements since the last update (col 8 lines 12-59; col. 11 lines 26-59); and wherein

said latency probe means updates said DNS servers with clients' latency data (col 8

lines 12-59; col. 11 lines 26-59).

As per claims 13 and 34, Gupta teaches a service metric probe means consults a

configuration file containing each DNS name in its area and the set of services

associated with each DNS name (col. 8 lines 6-10; col 11 lines 26-32), and wherein said

services include, but are not limited to: HTTP, HTTPS, FTP, streaming media, and/or

generic SNMP (col. 8 lines 17-26).

As per claims 14 and 35, Gupta teaches a latency probe means calculates the latency

from its location to a client's location (col. 12 lines 37-63; col. 13 lines 40-67).

As per claims 15 and 36, Gupta teaches a each server in said network has a metric test

associated with each service supported by said server (col. 8 lines 35-48).

As per claims 16 and 37, Gupta teaches a service metric probe means periodically

performs metric tests on the servers within its area, and wherein said service metric

probe means records the metric results from said periodic tests (col. 8 lines 35-48).

As per claims 17 and 38, Gupta teaches a latency probe means calculates the round

trip time for sending a packet to a client to obtain the latency value, and wherein the

round trip time tests that said latency probe means performs, includes, but are not

limited to: PING, UDP Reverse Name lookup, and/or UDP Packets to high number ports

(col. 12 lines 37-63).

As per claims 18 and 39, Gupta teaches when latency probe means sends a UDP

Packet probe to high number ports that fails, said latency probe means resends said

UDP Packet probe with a low TTL number and increments the TTL until failure occurs,

the last successful TTL value will indicate the partial latency data (col.13 lines 40-67).

As per claims 19 and 40, Gupta teaches a DNS server uses said latency test data

updates to determine the closest server to a client (col. 11 lines 26-59).

As per claims 20 and 41, Gupta teaches a DNS server uses said test result updates to

determine the best server to return for a given DNS name (col. 11 lines 26-59).

As per claims 21 and 42, Gupta teaches a service metric probe means sends a packet

request to a server and receives, in response, a packet containing the various metrics of

the server, and wherein said service metric probe means combines the server metrics

to arrive at a load metric which is sent to said DNS servers (col. 8 lines 12-59; col. Col.

12 lines 13-36).

Quarterman et al Publication Number US 2002/0099816 A1 contains limitations that

are relevant to the claims limitations as written. Applicants are requested to consider the

prior art of record upon responding to this office action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Frantz B. Jean whose telephone number is 571-272-

3937. The examiner can normally be reached on 8:30-6:00   M-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Zarni Maung can be reached on 571 272 3939. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

FRANTZ B. JEAN
PRIMARY EXAMINER

Frantz Jean